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March 3, 2015

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Via Email (drawls@fec.gov)

Federal Election Commission
Office of Complaints Examination and Legal Administration
999 E Street, N.W.
Washington, D.C. 20463

Attention: Donna Rawls, Paralegal

Re: RR 14L-41: Joni for Iowa

To Whom It May Concern:

This letter responds to the letter from Jeff S. Jordan dated January 6, 2015 to Joni for Iowa and Bradley Crate, in his official capacity as treasurer (collectively, "Joni for Iowa"), regarding Joni for Iowa's 2014 July Quarterly Report and the subsequent amendments showing estimated debts outstanding. Joni for Iowa has provided extensive supporting documentation to the Commission through the form of miscellaneous reports, and stands by its reporting. In short, although it may be the preference of the Commission's Reports Analysis Division ("RAD"), or a particular RAD analyst, that committees update their reports in real-time that is not what the law requires. Rather, FEC reports provide a snapshot of a committee's financial information based on the information available to the committee at a particular time. Because Joni for Iowa fulfilled its reporting obligations on its 2014 July Quarterly Report, and went above and beyond to provide an amended report that included estimated debts – estimates that were not available at the time it filed the original report – the Commission should close this matter without taking any action.

I. Legal Background

The Federal Election Campaign Act requires committees to report the "amount and nature of outstanding debts and obligations owed by" the committee. 52 U.S.C. § 30104(b)(8). The implementing regulations specify that the committee "shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee." 11 C.F.R. § 104.3(d). Any debt over \$500 must "be reported as of

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the date on which the debt or obligation is incurred." 11 C.F.R. § 104.11(b). "If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate." 11 C.F.R. § 104.11(b). The regulations also say that "[o]nce the exact amount is determined, the political committee shall either amend the report(s) containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined." 11 C.F.R. § 104.11(b). Joni for Iowa fully complied with the statute and regulations.

II. Discussion

A. Because of the timing of the primary election and the July Quarterly Report, actual debts were not known on the day the report was filed.

Iowa held its Republican primary election on June 3, 2014. The close of books for the July Quarterly Report was June 30, a mere 27 days after the primary, which was prior to the next billing cycle for most vendors. That means vendors closed their books on the same day as Joni for Iowa, and issued invoices *after* the close of books. With the report due on July 15, the Committee had not even received the invoices by the day the report was due.¹ Moreover, and as discussed below, several of the key vendors' compensation had not been fully agreed to at that time, and was being negotiated. Thus, there were no written obligations setting forth the amount that would be due in the future or even agreements in place that would provide a specific sum due. As such, there was no actual debt to report, given the lack of invoices from vendors or any firm agreement on the amount that was due. Accordingly, Joni for Iowa could not report exact amounts of debt because specific amounts had not been determined.

¹ Compounding the reporting pressures, of course, is the requirement that Senate candidates file their reports in hard copy with the Secretary of the Senate, meaning that the report had to be finalized for printing early in the day on July 15. 52 U.S.C. § 30102(g)(1). With the schedule, invoices would have had to have been received by July 11 to be included on the report.

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B. Joni for Iowa could not make a good-faith estimate of debts on the July Quarterly Report because the exact amounts were being negotiated.

The Commission's regulations for disclosure of campaign debt permit committees to estimate debts.² Given the timing of the primary, however, and the need to negotiate the exact amounts due for primary services, this would have been impossible for Joni for Iowa to do with any reasonable degree of precision.

The primary reason for this is that the committee had orally agreed to pay many of its vendors a bonus if Senator Ernst won the primary election. Sometimes this "win bonus" was a substantial portion of the vendor's payment, reflecting the five-person, highly competitive nature of the race. The exact amount of those bonuses, however, had not yet been determined at the time of the election, given the likelihood of the race going to a convention,³ the need for additional services to prepare for the convention, and the uncertainty about fundraising prospects. Vendors were not willing to commit to a low amount given the prospect of a win, but were also not insisting on being paid too high an amount before the primary with the likelihood that they would not be paid if the campaign failed to secure the nomination. Simple business reality dictated that a successful primary would mean more compensation and a failed primary would mean less. This is common practice in campaigns given the desire to work on high-profile races and the uncertainty in the business.

Although Joni for Iowa would have liked to have locked down the specific amounts it had to pay the vendors immediately after the election, this was not possible. First, immediately after the primary, Senator Ernst faced attacks that required the attention of campaign staff. Thus, there was a delay in negotiating rates (this is not to say that the rush of the campaign is what precluded including debt estimates, only that it precluded the negotiations,

² Thus, the Commission's regulations recognize that debt reporting is both different from other aspects of reports and also similar. On the one hand, like contribution and expenditure reporting it is a snapshot report, not a real-time update. On the other hand, debt reporting imposes a layer of accrual-based accounting onto what is otherwise a cash-based report. This adds complexity and also some uncertainty given the projections that must be made.

³ Under Iowa law, a candidate had to clear 35% of the primary vote to be declared the nominee. Polling just before the primary indicated that Senator Ernst was close to this threshold, but not clearly past it.

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which the committee was under no legal obligation to conclude). In addition, even once campaign staff were fully engaged, the negotiations took time, in order to derive commercially reasonable and fair terms.

At the time Joni for Iowa filed its initial July Quarterly Report, it did not include an estimate of debts, because it could not quantify the amount due as to each particular vendor. The Commission's reporting forms are very specific with respect to reporting debts on a vendor-by-vendor basis. Although Joni for Iowa could have reported a very rough estimate of the total debts, it could not make a good-faith estimate of any particular debt, given the ongoing business discussions over the exact amount owed. Indeed, if RAD's position is that Joni for Iowa should have guessed at an amount to include, then such a guess could have led to less favorable terms being negotiated with a vendor (if the guess was too high) or losing a vendor for the general election (if the guess was too low). In sum, during the second quarter, Joni for Iowa simply could not provide an estimate for debts outstanding on a vendor-by-vendor basis with any degree of certainty. Because reports are filed subject to civil and criminal penalties for inaccurate reports, Joni for Iowa determined it should not include estimates without a reasonable foundation.

C. Joni for Iowa was not required to amend its report at all because the regulations contemplate reporting in the future.

The Commission's regulations say that "[o]nce the exact amount [of debt] is determined, the political committee shall either amend the report(s) containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined." 11 C.F.R. § 104.11(b) (emphasis added). Pursuant to this regulation, once Joni for Iowa ascertained the exact amount of debts during the third quarter, it was permissible to "indicate the correct amount on the report for" the third quarter, which is what Joni for Iowa initially planned to do. Simply put, under the plain text of Section 104.11(b), Joni for Iowa was under no obligation to file an amended report to disclose debts once they were ascertained with certainty.

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D. RAD upset the orderly and lawful reporting plan by sending notices to donors stating that their contributions for debt retirement were impermissible.

Unfortunately, Joni for Iowa was unable to follow through with its plan to disclose outstanding debts on the next quarterly report pursuant to the regulation. Before the report was due, RAD sent letters to other committees that made primary debt retirement contributions to Joni for Iowa suggesting that the contributions were impermissible because Joni for Iowa "appeared" to have insufficient debt.⁴ Those letters stated:

If any apparently impermissible contribution in question was incompletely or incorrectly disclosed, you should amend your original report with clarifying information.

If you have made an impermissible contribution, you must request a refund or provide a written authorization for a redesignation of the contribution within 60 days of the treasurer's receipt.

If the foregoing conditions for redesignations were not met within 60 days of the treasurer's receipt, your committee must obtain a refund. (11 CFR §103.3(b)(1) and (3))

Please inform the Commission of your corrective action promptly in writing and provide a photocopy of the refund or redesignation request sent to the recipient committee(s).

Nowhere did the letter state that Joni for Iowa might have outstanding debts sufficient to warrant debt retirement contributions. Nor did it provide a method to remedy the issue other than seeking to have the contribution redesignated or refunded. Given RAD's premature response and unduly restrictive reading of the law's requirements, Joni for Iowa had to find a way to address this issue or face the loss of revenue necessary to pay vendors for the primary election at a time when it also needed to spend money on vendors for the general election.

⁴ See, e.g., Letter to Orrin PAC dated August 13, 2014, FEC Image No. 14330059462; Letter to The Senate Victory Fund PAC dated August 27, 2014, FEC Image No. 14330060249.

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days remaining in the quarter after the primary. First, the amount raised from donors during that period for debt reduction was approximately \$110,000. Second, Joni for Iowa's records indicate that primary cash on hand after the election was approximately \$161,000. Third, Joni for Iowa made payments from June 4 to June 30 for primary expense of approximately \$273,000. This left just under \$3,000 in net debts outstanding at the end of the month. Accordingly, without including the unknown debts, Joni for Iowa had net debts outstanding.⁷

III. Conclusion

The specific issue for this referral is not entirely clear, but appears to be that because Joni for Iowa filed an amended report in September that showed debts of approximately \$665,000 (later reduced to approximately \$571,000), it somehow violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d). As detailed above, Joni for Iowa was not able to estimate the amount of debt with any degree of certainty for each vendor when it filed the July Quarterly Report. It ascertained the amount of debt during the next reporting period. The regulations make clear that Joni for Iowa could have disclosed this debt on the next report. Because of the Commission's aggressive efforts to get donors to seek refunds, Joni for Iowa filed an amended report showing the debt. As the Commission's regulations also provide, a committee that determines an accurate estimate of debts may file an amended report, which is what Joni for Iowa did.

Thus, in order for the Commission to believe there was a violation, it would have to find that Joni for Iowa's decision not to report unknowable and therefore likely inaccurate estimates was not permissible. Moreover, the Commission would have to find a violation based on an amended report that was the result of Joni for Iowa taking actions to provide more immediate information, rather than waiting to report the debt on the next report, which it was entitled to do. Indeed, the Commission would have to find a violation where the decision to amend was driven largely by the Commission's actions with respect to lawful contributors.

⁷ Because there can be net debts outstanding within a reporting period, this provides further reasons why RAD should take a different approach with its letters to donor committees.

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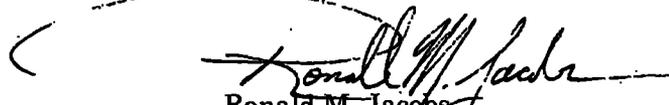
This will have grave implications for the conduct of campaigns. First, campaigns in similar situations could simply report very low estimated debts so as to provide a placeholder. For example, it appears that if Joni for Iowa had estimated debts of \$1,000 for each vendor, this would have satisfied RAD, since it anticipates amendments or changes on future reports. This does nothing to increase transparency. Alternatively, campaigns could report very high estimates. This would minimize the chance that the Commission would send letters trying to dissuade donors from contributing to debt retirement. It would also provide no more transparency than under-reporting.

Instead, the better course would be for the Commission to recognize the timing in this particular election vis-à-vis the reporting period made it impracticable to estimate debts in time to file the report, that Joni for Iowa did the best that it could reasonably do under the circumstances, and close this matter. In the future, RAD's letters to donor committees should state that their contributions to debt retirement may be entirely permissible if the committee has net debts outstanding at the time of the contribution.

* * * * *

Please do not hesitate to call (202.344.8215) or email (rmjacobs@venable.com) at any time if you have any questions or need additional information. We would be pleased to meet with Commission staff to discuss this matter further.

Respectfully submitted,



Ronald M. Jacobs
Counsel to Joni for Iowa and
Bradley Craté in his official capacity as
Treasurer

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